

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: FIRESTAR DIAMOND, INC., <i>et al.</i> Debtors.	Chapter 11 No. 18-10509 (SHL) (Jointly Administered)
NIRAV MODI, INC., Plaintiff, v. MALCA-AMIT USA, LLC, Defendant.	Adv. Proc. No. 19-1372

**STIPULATION AND ORDER (A) PERMITTING CHAPTER 11 TRUSTEE TO
SUBSTITUTE AS PLAINTIFF AND (B) DISMISSING ADVERSARY PROCEEDING**

Richard Levin, not individually but solely as chapter 11 trustee ("**Trustee**") for Debtors Firestar Diamond, Inc., Fantasy, Inc., and Old AJ, Inc., f/k/a A. Jaffe, Inc. (collectively, the "**Debtors**") and as assignee of all claims of Nirav Modi, Inc. ("**NMI**"), NMI, and Malca-Amit USA, LLC ("**Malca**," and together with the Trustee and NMI, the "**Parties**"), by and through their undersigned counsel, stipulate and agree:.

RECITALS

A. On September 16, 2019, NMI filed a complaint (the "**Complaint**") against Malca-Amit USA, LLC ("**Malca**") in the Supreme Court of the State of New York, County of New York, bearing Index No. 655360/2019 (the "**State Court Action**").

B. The Complaint alleges that on February 27, 2018, NMI arranged for Malca to ship goods (the "**Disputed Goods**") from NMI's Honolulu store to Malca's New York City offices and that Malca wrongfully refused to return the Disputed Goods upon demand and instead delivered them to the Trustee.

C. On February 26, 2018, the Debtors filed voluntary chapter 11 petitions in this Court.

D. On April 12, 2019, the Trustee filed a Notice of Presentment of Stipulation between NMI and the Trustee authorizing the Trustee to sell the Disputed Goods. [Dkt. 802.]

E. On May 7, 2019, the Bankruptcy Court entered the stipulation and order authorizing the Trustee to sell the Disputed Goods. [Dkt. 876.]

F. On October 11, 2019, Malca removed the State Court Action to this Court.

G. On December 31, 2019, the Trustee filed a motion to approve a settlement (the “**Affiliates Settlement**”) with NMI and other non-debtor U.S. affiliates of the Debtors. [Dkt. 1354.]

H. The Court entered an order approving the Affiliates Settlement on January 27, 2020. [Dkt. 1379.]

I. Under the Affiliates Settlement, NMI assigned all of its causes of action to the Trustee. Accordingly, the claims in this adversary proceeding are property of the Debtors’ estates under the Affiliates Settlement.

STIPULATION

The Parties stipulate and agree to the following:

1. The Trustee is allowed to substitute as plaintiff in this lawsuit under Rule 25(c) of the Federal Rules of Civil Procedure (“**Civil Rules**”), made applicable in this adversary proceeding by Rule 7025 of the Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rules**”).

2. The Trustee withdraws all claims against Malca, and dismisses the above-captioned adversary proceeding with prejudice under Civil Rule 41(a)(1)(ii), made applicable in this adversary proceeding by Bankruptcy Rule 7041.

Dated: May 13, 2020
New York, New York

Respectfully submitted,

JENNER & BLOCK LLP

By: /s/ Marc Hankin
Marc Hankin
Carl Wedoff
919 Third Avenue
New York, New York 10022-3908
(212) 891-1600
mhankin@jenner.com
cwedoff@jenner.com

Counsel for the Chapter 11 Trustee

Dated: May 13, 2020
New York, New York

CLYDE & CO US LLP

By: /s/ Peter J. Rossi
Peter J. Rossi
The Chrysler Building
405w Lexington Avenue, 16th Floor
New York, New York 10174
(212) 710-3900
peter.rossi@clydeco.us

Counsel for Malca-Amit USA, LLC

Dated: May 13, 2020
New York, New York

VOZZOLO LLC

By: /s/ Antonio Vozzolo
Antonio Vozzolo
499 NY-304
New City, NY 10956
avozzolo@vozzolo.com

Counsel for Nirav Modi, Inc.

IT IS SO ORDERED.

Dated: May 22, 2020
New York, New York

/s/ Sean H. Lane
Honorable Sean H. Lane
United States Bankruptcy Judge